

1 HONORABLE RONALD B. LEIGHTON
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA
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15 JULAINNE PANAGOCOS, et al.,
16 Plaintiffs,
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18 v.
19 JOHN J. TOWERY, et al.,
20 Defendants.
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Case No. C10-5018RBL

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS WITHOUT PREJUDICE AND
DENYING MOTION FOR SANCTIONS

THIS MATTER is before the Court on the Olympia Defendants' Motion to Dismiss Without Prejudice and Renewed Motion for Sanctions [Dkts. #60, 61]. The Plaintiffs are members of the anti-war group "Olympia Port Militarization Resistance." They claim that the Olympia Defendants used excessive force when arresting plaintiffs, destroyed evidence of the arrests, and mistreated plaintiffs while they were in custody. This Court has granted two previous motions for a more definite statement. [Dkts. #16, 52]. The most recent order required Plaintiffs to adequately clarify their claims for excessive force and mistreatment in jail. [Dkt. #52].

1 Plaintiffs filed a third amended complaint on October 7, 2010. [Dkt. #54]. The third amended
 2 complaint did little to remedy the deficiencies in the second amended complaint. The Court agrees with the
 3 Olympia Defendants that Plaintiffs should have provided a few simple facts regarding each incident. For
 4 example, “An unidentified Olympia Police Officer struck Plaintiff Jane Doe in the back, causing a severe
 5 bruise, while she protested on the evening on November 13, 2007.” Nevertheless, the third amended
 6 complaint meets the minimal standards of notice pleading.

8 A complaint is sufficient if it gives the defendant “fair notice of what the ... claim is and the ground
 9 upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 US 544, 555 (2007)(quoting *Conley v. Gibson*, 355
 10 US 41, 47-48 (1957)). The paragraph regarding excessive force now satisfies the *Twombly* standard. It
 11 states:

13 Plaintiffs were arrested by the Olympia Police based on the above discussed
 14 violations. Plaintiffs Panagacos, Cox, Snyder, Porter, Robbins, and Garfield were
 15 arrested together on November 13, 2007. Plaintiffs Rhodes, Evans, Grande, and Rios
 16 were arrested during the November, 2007 protests, but on different days. All of these
 17 Plaintiffs were subjected to excessive force by the Olympia Police during these
 18 demonstrations including copious and drastically illegal use of pepper spray on
 19 peaceful demonstrators, and massive firing of less retract munitions including rubber
 20 bullets, plastic baton rounds, pepper shells, tear gas, and concussion grenades fired
 into crowds, and at individuals, as well as excessive and inappropriate use of batons,
 hands and bodies for physical battery. All of these Plaintiffs suffered physical injury,
 pain and suffering, apprehension, and severe emotional distress. The other three
 Plaintiffs did not suffer physical injury as a result of the events that are the basis for
 this action.” [Pl.’s Third Am. Compl., ¶2.44, Dkt. #54]

21 Although not detailed, this section does provide the defendants with fair notice of the claim. This paragraph
 22 describes which defendants (the Olympia Police), did what (used pepper spray, rubber bullets, plastic batons,
 23 etc.), and to whom (individually named plaintiffs). Defendants’ Motion to Dismiss Without Prejudice is
 24 DENIED as to Plaintiffs’ excessive force claim.¹

28 ¹The Court allows the claim to proceed because notice pleading is a low bar to clear. However, the
 Court will not allow Plaintiffs to amend their complaint in the future to add new claims or to further clarify
 current claims.

1 On the other hand, the Plaintiffs still have not identified a specific instance of mistreatment in jail.

2 In fact, Plaintiffs seem to retract this claim:

3 "All such requests were denied virtually completely resulting in medical harm to at
4 least one Plaintiff (Stephanie Snyder) that persisted long after the immediate violations
5 by Defendants. That harm in the jail is the subject of a different action, Love v. City
6 of Olympia, not of this action, and is included herein for factual background purposes."
[Pl.'s Third Am. Compl., ¶2.50, Dkt. #54]

7 Plaintiffs apparently only provide this information for "background purposes" so the claim for mistreatment
8 in jail will not be considered in this case. Defendants' Motion to Dismiss Without Prejudice is GRANTED
9 as to Plaintiffs' claim based on any alleged mistreatment in jail.

10 Defendants' Motion to Dismiss Without Prejudice [Dkts. #60, 61] is GRANTED IN PART and
11 DENIED IN PART. Defendants' Motion for Sanctions [Dkts. #60, 61] is DENIED.

13 IT IS SO ORDERED

14 Dated this 15th day of December, 2010.

16 
17 Ronald B. Leighton

18 RONALD B. LEIGHTON
19 UNITED STATES DISTRICT JUDGE